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OFFICIAL GAZETTE



GOVERNMENT OF GOA

GOVERNMENT OF GOA Department of Law and Judiciary

Legal Affairs Division

Notification

No. 12-2-94-95/LA

The Depositories Ordinance, 1995 (Ordinance No. 11 of 1995) which has been promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II, Section I, dated 20th September, 1995 is hereby published for the general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 20th October, 1995.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 20th September, 1995/

/Bhadra 29, 1917 (Saka)

THE DEPOSITORIES ORDINANCE, 1995

No. 11 of 1995

Promulgated by the President in the Forty-sixth
Year of the Republic of India.

An Ordinance to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Depositories Ordinance, 1995.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. (1) In this Ordinance, unless the context otherwise requires, —

(a) "Beneficial owner" means a person whose name is recorded as such with a depository;

(b) "Board" means Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992; 15 of 1992.

(c) "bye-laws" means bye-laws made by a depository under section 26;

(d) "Company Law Board" means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956;

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(e) "depository" means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992; 15 of 1992.

1 of 1956.

(f) "issuer" means any person making an issue of securities;

(g) "participant" means a person registered as such under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(h) "prescribed" means prescribed by rules made under this Ordinance;

(i) "record" includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;

(j) "registered owner" means a depository whose name is entered as such in the register of the issuer;

(k) "regulations" means regulations made by the Board;

(l) "security" means such security as may be specified by the Board;

(m) "service" means any service connected with recording of allotment of securities or transfer of ownership of securities in the record of a depository.

(2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 or the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992, shall have the meanings respectively assigned to them in those Acts. 1 of 1956. 42 of 1956. 15 of 1992.

CHAPTER II

Certificate of commencement of business

3. Certificate of commencement of business by depositories.—(1) No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.

(2) A certificate granted under sub-section (1) shall be in such form as may be specified by the regulations.

(3) The Board shall not grant a certificate under sub-section (1) unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions:

Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.

CHAPTER III

Rights and Obligations of depositories, participants, issuers and beneficial owners

4. Agreement between depository and participant.—(1) A depository shall enter into an agreement with one or more participants as its agent.

(2) Every agreement under sub-section (1) shall be in such form as may be specified by the bye-laws.

5. Services of depository.— Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

6. Surrender of certificate of security.—(1) Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations.

(2) The issuer, on receipt of certificate of security under sub-section (1), shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.

(3) A depository shall, on receipt of information under sub-section (2), enter the name of the person referred in sub-section (1) in its records, as the beneficial owner.

7. Registration of transfer of securities with depository.—(1) Every depository shall, on receipt

of intimation from a participant, register the transfer of security in the name of the transferee.

(2) If a beneficial owner or a transferee of any security seeks to have custody of such security the depository shall inform the issuer accordingly.

8. Options to receive security certificate or hold securities with depository.—(1) Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

(2) Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

9. Securities in depositories to be in fungible form.—(1) All securities held by a depository shall be dematerialised and shall be in a fungible form.

(2) Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the Companies Act, 1956 shall apply to the securities held by a depository on behalf of the beneficial owners. 1 of 1956.

10. Rights of depositories and beneficial owner.—(1) Notwithstanding anything contained in any other law for the time being in force, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

(2) Save as otherwise provided in sub-section (1), the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

(3) The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

11. Register of beneficial owner.— Every depository shall maintain a register and an index of beneficial owners in the manner provided in section 150, section 151 and section 152 of the Companies Act, 1956. 1 of 1956.

12. Pledge or hypothecation of securities held in a depository.—(1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.

(2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

13. *Furnishing of information and records by depository and issuer.* — (1) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws.

(2) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

14. *Option to opt out in respect of any security.* —

(1) If a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly.

(2) The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall within thirty days of the receipt of intimation from the depository and on fulfilment of such conditions and on payment of such fees as may be specified by the regulations issue the certificate of securities to the beneficial owner or the transferee as the case may be.

15. *Bankers' Books Evidence Act to apply to depositories.* — The Bankers' Books Evidence Act, 1891 shall apply 18 of 1891. in relation to a depository as if it were a bank as defined in section 2 of that Act.

16. *Depositories to indemnify loss in certain cases.* — (1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such owner.

(2) Where the loss due to the negligence of the participant under sub-section (1) is indemnified by the depository shall have the right to recover the same from such participant.

17. *Rights and obligations of depositories etc.* —

(1) Subject to the provisions of this Ordinance the rights and obligations of the depositories, participants and the issuers whose securities are dealt with by a depository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations.

CHAPTER IV

Enquiry and Inspection

18. *Power of Board to call for information and enquiry.* — (1) The Board on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may by order in writing, —

(a) call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or

(b) authorise any person to make an enquiry or inspection in relation to the affairs of the

issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

(2) Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.

19. *Power of Board to give direction in certain cases.* — Save as provided in this Ordinance, if after making or causing to be made an enquiry or inspection, the Board is satisfied that it is necessary —

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market,

it may issue such directions, —

(a) to any depository or participant or any person associated with the securities market; or

(b) to any issuer,

as may be appropriate in the interest of investors or the securities market.

CHAPTER V

Penalty

20. *Offences.* — Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Ordinance or any regulations or bye-laws made thereunder shall be punishable with imprisonment for a term which may extend to five years or with a fine, or with both.

21. *Offences by companies.* — (1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or, is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall

also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER VI

Miscellaneous

22. *Cognizance of offences by courts.*—(1) No court shall take cognizance of any offence punishable under this Ordinance or any regulations or bye-laws made thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Ordinance.

23. *Appeals.*—(1) Any person aggrieved by an order of the Board made under this Ordinance, or the regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

24. *Power of Central Government to make rules.*

—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters; namely:—

(a) the time within which an appeal may be preferred under sub-section (1) of section 23;

(b) the form in which an appeal may be preferred, under sub-section (3) of section 23 and the fees payable in respect of such appeal;

(c) the procedure for disposing of an appeal under sub-section (4) of section 23.

25. *Power of Board to make regulations.*—(1) Without prejudice to the provisions of section 30 of the Securities and Exchange Board of India Act, 1992, the Board may by notification in the Official Gazette, make regulations consistent with the provisions of this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for —

(a) any other form in which record is to be maintained under clause (i) of section 2.

(b) the form in which the certificate of commencement of business shall be issued under sub-section (2) of section 3;

(c) the manner in which the certificate of security shall be surrendered under sub-section (1) of section 6;

(d) the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section (1) of section 12;

(e) the conditions and the fee payable with respect to the issue of certificate of securities under sub-section (3) of section 14;

(f) the rights and obligations of the depositories, participants and the issuers under sub-section (1) of section 17;

(g) the eligibility criteria for admission of securities into the depository under sub-section (2) of section 17.

26. *Power of depositories to make bye-laws.*—(1) A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Ordinance and the regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for —

(a) the eligibility criteria for admission and removal of securities in the depository;

(b) the conditions subject to which the securities shall be dealt with;

(c) the eligibility criteria for admission of any person as a participant;

(d) the manner and procedure for dematerialisation of securities;

(e) the procedure for transactions within the depository;

(f) the manner in which securities shall be dealt with or withdrawn from a depository;

(g) the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;

(h) the conditions of admission into and withdrawal from a participant by a beneficial owners;

(i) the procedure for conveying information to the participants and beneficial owners on dividend

declaration, shareholder meetings and other matters of interest to the beneficial owners;

(j) the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;

(k) the manner of creating pledge or hypothecation in respect of securities held with a depository;

(l) inter-se rights and obligations among the depository, issuer, participants, and beneficial owners;

(m) the manner and the periodicity of furnishing information to the Board, issuer and other persons;

(n) the procedure for resolving disputes involving depository, issuer, company or a beneficial owners;

(o) the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;

(p) the internal control standards including procedure for auditing, reviewing and monitoring.

(3) Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

(4) If the depository fails or neglects to comply with such order within the specified period, the Board, may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

27. *Rules and regulations to be laid before Parliament.* — Every rule and every regulation made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the sessions immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulations should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

28. *Application of other laws not barred.* — The provisions of this Ordinance shall be in addition to, and not, in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

29. *Removal of difficulties.* — (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance

as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

30. *Amendments to certain enactments.* — The enactments specified in the Schedule to this Ordinance shall be amended in the manner provided therein.

THE SCHEDULE

(See section 30)

Amendments to certain enactments

PART I

Amendment to the Indian Stamp Act, 1899

(2 of 1899)

Amendment

After section 8, the following section shall be inserted, namely:—

‘8A. *Securities not liable to stamp duty.* — Notwithstanding anything contained in this Act,—

(a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;

(b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories Ordinance, 1995, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;

(c) transfer of registered ownership of shares from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;

(d) the transfer of beneficial ownership of shares, such shares being shares of a company dealt with by a depository shall not be liable to duty under article 62 of Schedule I of this Act.

Explanation. — For the purposes of this section the expressions “beneficial owner”, “depository”, “issued” and “records” shall have the meanings respectively assigned to them in clause (a), clause (e), clause (f) and clause (i) of sub-section (1) of section 2 of the Depositories Ordinance, 1995.’

PART II

Amendments to the Companies Act, 1956

(1 of 1956)

Amendments

1. In section 2, after clause (45A), the following clause shall be inserted, namely:—

“(45B) ‘Securities and Exchange Board of India’ means the Securities and Exchange Board

of India established under section 3 of the Securities and Exchange Board of India Act, 1992.”

2. After section 2, the following section shall be inserted, namely:—

“2A. Words and expressions used and not defined in this Act but defined in the Depositories Ordinance, 1995 shall have the same meaning respectively assigned to them in that Ordinance.”

3. In section 41, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Every person holding equity share capital of company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.”

4. In section 49, in sub-section (5), after clause (b), the following clause shall be inserted, namely:—

“(c) from holding investments in the name of a depository when such investment are in the form of securities held by the company as a beneficial owner.”

5. In section 51, the following proviso shall be inserted, namely:—

“Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.”

6. Section 83 shall be omitted.

7. In section 108, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository”.

8. In section 111, after sub-section (13), the following sub-section shall be inserted, namely:—

“(14) In this section ‘company’ means a private company and includes a private company which had become a public company by virtue of section 43A of the Companies Act, 1956.”

9. After section 111, the following section shall be inserted, namely:—

“111A. (1) In this section, unless the context otherwise requires, ‘company’ means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(3) The Company Law Board may on an application made by a depository, company, participant or investor or the Securities and Exchange Board of

India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission was delivered to the company as the case may be, after such inquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985.

(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under the section.”

10. In section 113, the following sub-section shall be inserted at the end:—

“(4) Notwithstanding anything contained in sub-section (1), where the securities are dealt in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.”

11. In section 150, in sub-section (1), in clause (b), the words “distinguishing each share by its number” shall be omitted.

12. In section 152, in sub-section (1), in clause (b), the words “distinguishing each debenture by its number” shall be omitted.

13. After section 152, the following section shall be inserted, namely:—

“152A. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Ordinance, 1995, shall be deemed to be an index of members and register and index of debenture holders, as the case may be, for the purposes of this Act.”

14. In Schedule II, in Part II, in clause C, after sub-section 9, the following sub-clause shall be inserted, namely:—

“9A. The details of option to subscribe for securities to be dealt in a depository.”

PART III

Amendments to the Securities Contracts (Regulation)

Act, 1956
(42 of 1956)

Amendments

1. In section 2, for clause (i), the following clause shall be substituted, namely:—

“(i) spot delivery contract means a contract which provides for,—

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.”

2. Section 22A shall be omitted.

PART IV

Amendment to the Income Tax Act, 1961

(43 of 1961)

Amendment

In section 45, after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Where any person has had at any time during previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories Ordinance, 1995, and for the purposes of —

(i) section 48; and

(ii) proviso to clause (42A) of section 2,

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

Explanation.—For the purposes of this sub-section the expressions “beneficial owner”, “depository” and “security” shall have the meanings respectively assigned to them in clauses (a), (e) and (l) of sub-section (1) of section 2 of the Depositories Ordinance, 1995.”

PART V

Amendment to the Benami Transactions (Prohibition)

Act, 1988

(45 of 1988)

Amendment

In section 3, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Nothing in sub-section (1) shall apply to—

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter”;

(b) the securities held by a —

(i) depository as registered owner under sub-section (1) of section 10 of the Depositories Ordinance, 1995;

(ii) participant as an agent of a depository.

Explanation.—The expressions “depository” and “participants” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Ordinance, 1995.”

PART VI

Amendments to the Securities and Exchange Board of India Act, 1992

(15 of 1992)

Amendments

1. In section 2, in sub-section (2), for the words, brackets and figures “the Securities Contracts (Regulation) Act, 1956”, the words, brackets and figures “the Securities Contracts (Regulation) Act, 1956 or the Depositories Ordinance, 1995” shall be substituted.

2. In section 11, in clause (ba), for the words “depositories, custodians”, the words “depositories, participants, custodians” shall be substituted.

3. In section 12, in sub-section (1A), for the words “depository, custodian”, at both the places where they occur, the words “depository, participant, custodian” shall be substituted.

4. In section 16, in sub-section (1), for the words “this Act”, the words “this Act or the Depositories Ordinance, 1995” shall be substituted.

SHANKER DAYAL SHARMA,

President

K. L. MOHANPURIA,

Secy. to the Govt. of India.